

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO (AKRON)**

Sandra Dixon)	Case No. 5:09-cv-02250-JRA
)	
Plaintiff)	Judge John R. Adams
)	
-vs-)	
)	
ServPro Industries, Inc. et al.)	<u>Defendant's Motion for Summary</u>
)	<u>Judgment</u>
Defendant		

Now comes Defendant, Jack Sincere ("Sincere" or "Defendant"), by and through undersigned counsel, and hereby moves for summary judgment with respect to Count Two and Count Three of Plaintiff's Complaint against Defendant Sincere. As more fully shown in the attached Memorandum in Support, there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law. In short:

- Count Two. R.C. Section 2305.11(B) establishes a one-year statute of limitations for assault and battery claims. Plaintiff's claims allege that Defendant Sincere committed assault and/or battery against Plaintiff "on or about October 02, 2006 through September 07, 2007". In her deposition, Plaintiff testified that she has not had any contact with Defendant Sincere since September 7, 2007. As Plaintiff did not assert these claims until September 2009, Defendant is entitled to summary judgment as a matter of law with respect to Count Two.
- Count Three. Under Ohio law, the statute of limitations applicable to a claim for intentional infliction of emotional distress depends on the subject matter of the acts giving rise to the complaint, rather than the form in which the action is pled. Doe v. First United Methodist Church, 68 Ohio St. 3d 531 (1994); Stafford v. Columbus Bonding

Center, 177 Ohio App. 3d 799, 810 (10th Dist. 2008). Plaintiff's claim for intentional infliction of emotional distress is based upon the allegations of assault and battery, noted above, and is therefore governed by the one-year statute of limitations contained in R.C. 2305.11(B). *See Doe*, 68 Ohio St. 3d at 536. As Plaintiff did not assert this claim until September 2009, Defendant is entitled to summary judgment as a matter of law with respect to Count Three.

Respectfully submitted,

s/ John N. Childs
John N. Childs (#0023489)
BRENNAN, MANNA & DIAMOND, LLC
75 East Market Street
Akron, Ohio 44308
P (330) 253-1946
F (330) 253-6906
jnchilds@bmdllc.com
Counsel for Defendant Jack Sincere

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September, 2010, a copy of the foregoing *Memorandum in Support of Defendant's Motion for Summary Judgment* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ John N. Childs
John N. Childs (#0023489)
BRENNAN, MANNA & DIAMOND, LLC
75 East Market Street
Akron, Ohio 44308
(330) 253-5060
(330) 253-1977 (fax)
jnchilds@bmdllc.com
Counsel for Defendant Jack Sincere